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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

1 GARY KREMEN,
2 Plaintiff,
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4 vs.
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6 AMERICAN REGISTRY FOR INTERNET
7 NUMBERS LTD.,
8 Defendant.

Case No. **C 06-2554 JW**
[Related to Case No. C 98-20718 JW]

[PROPOSED] JOINT CASE MANAGEMENT
STATEMENT AND [PROPOSED] ORDER

Hearing Date: October 23, 2006
Time: 10:00 a.m.
Location: Courtroom 8, 4th Floor
Judge: The Honorable James Ware

[PROPOSED] CMC STATEMENT AND ORDER
Case No. C 06-2554 JW

1 Pursuant to the Federal Rule of Civil Procedure (“Rule”) 26(f), Local Rule for the
 2 Northern District of California (“Local Rule”) 16-9, and Appendix A referenced to in Local Rule
 3 16-9, Plaintiff Gary Kremen (“Kremen”) submits this Proposed Case Management Statement and
 4 Proposed Order (“Joint Rule 26(f) Report”).¹

5 Counsel for both Plaintiff and Defendant attempted to reach a joint position; however, due
 6 to the unavailability of opposing counsel, and in observance of this Court’s order of August 28,
 7 2006, Plaintiff Kremen respectfully submits this [Proposed] Joint Case Management Statement
 8 and [Proposed] Order, incorporating Plaintiff’s edits to Defendant’s proposed terms. Plaintiff has
 9 notified the Defendant, and Defendant the Plaintiff, and hereby notices this Court, of their intent
 10 to submit a Joint Statement tomorrow, October 17, 2006. Meantime, out of respect for this
 11 Court’s Order, Plaintiff Kremen respectfully submits the following:

12 **1. A Brief Description Of The Events Underlying The Above-Entitled Action:**

13 Defendant ARIN is the entity which exclusively controls the allocation of IP Numbers
 14 (Internet Protocol addresses (“IP addresses”) and Autonomous System Numbers (“ASN’s”)) in
 15 North America. Plaintiff Kremen is an individual in the business of the utilization and
 16 optimization of Internet resources. On September 17, 2001, Plaintiff Kremen was issued an order
 17 in the related case of *Kremen v. Cohen* USDC N.D. Cal. Case No. C98 20718 JW (the “*Kremen v.*
 18 *Cohen Action*”), ordering Defendant ARIN to transfer to Kremen specifically identified IP
 19 Numbers resources (the “September 2001 Order”). At a time which is in dispute, Kremen
 20 presented ARIN with the September 2001 Order

21 **2. The Principal Factual Issues Which The Parties Dispute:**

22 In the present case, Plaintiff Kremen has asserted that ARIN’s operations regarding its
 23 administration of Internet Protocol addresses (“IP addresses”) and Autonomous System Numbers
 24 (“ASN’s”) generally and as directed towards himself are in violation of State and Federal antitrust
 25 and monopoly laws, as well as State unfair competition statutes. Plaintiff Kremen has also

26
 27 ¹ This filing is timely pursuant to the parties Stipulated Request And Order Continuing The
 28 Hearing On (1) Defendant American Registry of Internet Numbers, Ltd.’s Motion To Dismiss
 Plaintiff’s Complaint Pursuant To 12(b)(6) Or, Alternatively, For A Stay; and (2) Case
 Management Conference, which was entered by the Court on August 28, 2006.

1 brought suit for conversion, unfair competition, and breach of fiduciary duty on the basis of
 2 Defendant ARIN's non-compliance with and subsequent dealings regarding the September 2001
 3 Order, which Plaintiff asserts are driven by the anti-competitive behaviors alleged in support of
 4 the claims described above.

5 ARIN denies it has committed any of the wrongful conduct alleged by Kremen, denies
 6 that Kremen's complaint states a claim against ARIN and denies that Kremen is entitled to any
 7 relief whatsoever against ARIN.

8 **3. The Principal Legal Issues Which The Parties Dispute:**

9 In April 2006, Kremen sued ARIN for violations of federal antitrust and monopoly laws,
 10 as well as for antitrust violations, conversion, unfair competition and breach of fiduciary duty
 11 under California state law.

12 On June 8, 2006, ARIN moved this Court, pursuant to Rule 12(b)(6), to dismiss with
 13 prejudice Kremen's Complaint on the grounds that the Complaint failed to state any claim on
 14 which relief can be granted, or that Plaintiff's claims are timed-barred. ("Motion To
 15 Dismiss/Stay"). As an alternative ground for relief, ARIN requested in its Motion To
 16 Dismiss/Stay that this Court stay the present lawsuit pending disposition of ARIN's motion to
 17 modify or clarify this Court's September 17, 2001 Order issued by the Honorable James Ware
 18 ("Motion For Clarification/Modification") in the related case of *Kremen v. Cohen* USDC N.D.
 19 Cal. Case No. C98 20718 JW (the "*Kremen v. Cohen Action*"). Both motions are currently set for
 20 hearing on October 23, 2006 before this Court.

21 Defendant's motion to stay these proceedings pending a determination of its Motion for
 22 Clarification/Modification is predicated upon its assertion that the entirety of Plaintiff's case is
 23 contingent upon the possible modification of the September 2001 Order. Plaintiff refutes this
 24 position and asserts that its claims in the present case are independent of the outcome of ARIN's
 25 motion in the related case and therefore opposes the motion to stay.

26 The principal legal issues raised by Plaintiff's Complaint which the parties dispute
 27 include: (1) whether ARIN has restrained trade under Section 1 of the Sherman Act; (2) whether
 28 ARIN has conspired to restrain trade under Section 1 of the Sherman Act; (3) whether ARIN

1 monopolized the market at issue in violation of Section 2 of the Sherman Act; (4) whether ARIN
 2 attempted to monopolize the market at issue in violation of Section 2 of the Sherman Act; (5)
 3 whether ARIN conspired and acted to restrain trade under California's Cartwright Act; (6)
 4 whether ARIN converted particular IP Addresses and ASN's to which Plaintiff asserts his
 5 entitlement in constructive trust pursuant to the September 2001 Order; (7) whether ARIN
 6 breached a fiduciary duty allegedly owed to Kremen; (8) whether ARIN engaged in unfair
 7 business practices under California law; and (9) the amount of damages, if any, suffered by
 8 Kremen.

9 **4. Other Unresolved Factual Issues:**

10 No issues regarding service or jurisdiction have been raised or are in dispute.

11 **5. The Parties Which Have Not Been Served And The Reasons:**

12 None.

13 **6. The Additional Parties Which The Below-Specified Parties Intend To Join And The**
 14 **Intended Time Frame For Such Joinder:**

15 None at this time.

16 **7. The Following Parties Consent To Assignment Of This Case To A United States**
 17 **Magistrate Judge For Trial:**

18 The parties do not consent to the assignment of this case to a United States Magistrate
 19 Judge.

20 **ALTERNATIVE DISPUTE RESOLUTION**

21 **8-9. Information Regarding the ADR Process Or Deadline**

22 Due to the pending motion practice and the stipulated modified briefing schedules, the
 23 parties have not yet elected and filed papers on their ADR selections. On October 11, 2006, this
 24 Court issued a Notice re Noncompliance with Court Order concerning the ADR process filings
 25 mentioned above. Plaintiff Kremen request and intend to participate in the Court's mediation
 26 program, and Plaintiff requests that they be allowed to file the appropriate ADR filings within one
 27 week of the CMC scheduled for October 23, 2006.

28 **DISCLOSURES**

10. The Parties Certify That They Made The Following Disclosures:

2 In anticipation of the disposition of the pending motions before this Court, the parties have
 3 not exchanged their Initial Disclosures pursuant to Rule 26(a) of the Federal Rules of Civil
 4 Procedure, and therefore have not listed disclosures of persons, documents, or damage
 5 computations.

6 With respect to the disclosures and discovery authorized by Rule 26(a) and Rule 26(f),
 7 ARIN contends that the disclosure of information should be stayed until disposition of the
 8 pending motions, a determination which it contends will substantially vitiate, if not completely
 9 eliminate, issues in the present case. It is ARIN's position, therefore, that based on the facts and
 10 circumstances of this case, the parties' disclosure and discovery obligations under Rules 26(a)
 11 and 26(f) should be suspended until final resolution of the pending motions. No disclosures or
 12 discovery is necessary until such a time.

13 Plaintiff Kremen opposes ARIN's request to stay discovery or disclosures under Rule 26
 14 and refutes any grounds for requesting such a delay in discovery necessary to proceed. Plaintiff
 15 particularly opposes any contention that the motions in the related *Kremen v. Cohen* matter
 16 should in any way affect the progress of discovery in the present case.

17 DISCOVERY

18 **11. The Parties Agree To The Following Discovery:** ARIN contends that discovery
 19 should not take place as contemplated under the applicable Federal Rules of Civil Procedure and
 20 Local Rules until the disposition of ARIN's Motion To Dismiss and Motion For
 21 Modification/Clarification in the *Kremen v. Cohen* case. ARIN maintains that until the pending
 22 motions are resolved, the parties cannot determine the true issues in dispute or the time necessary
 23 to conduct or complete discovery, and thus, permitting discovery at this time would promote the
 24 wasteful use of valuable time and resources by the parties and their respective counsel. ARIN
 25 contends that if the Court does not rule on ARIN's Motion to Dismiss/Stay and Motion For
 26 Modification/Clarification on the scheduled hearing date of October 23, 2006, the Court should
 27 reschedule the CMC for a date after the full and final disposition of ARIN's pending motions.
 28 ARIN contends that if either motion does not dispose of this action in its entirety, that a forty-five

1 (45) day continuance from the date the last pending motion is ruled upon would provide the
 2 parties with adequate time to meet and confer regarding their disclosure and discovery obligations
 3 under Rule 26.

4 As stated above, Plaintiff Kremen absolutely opposes the requested delays in
 5 discovery and disclosures mandated and allowed by the Federal Rules of Civil Procedure (the
 6 "Rules"). The outcome of ARIN's Motion For Modification/Clarification in the related case has
 7 no bearing or effect on Plaintiff's antitrust and monopoly claims whatsoever, or the claims for
 8 damages arising from ARIN's tortuous conduct concerning its treatment of the Setpember 2001
 9 as it has has stood since its inception; no determination upon ARIN's motion would negate such
 10 damages or claims. Furthermore, short of the dismissal of Plaintiff's Complaint in its entirety
 11 with prejudice, the outcome of ARIN's Motion to Dismiss/Stay in the present case will not
 12 dispose of the core factual and legal issues of the present case such that the extensive delay
 13 requested by Defendant ARIN is justified. As such, Plaintiff requests that discovery and
 14 disclosures advance as intended by the Federal Rules of Civil Procedure.

15 Furthermore, Plaintiff Kremen anticipates the need to amend the number and amounts
 16 of discovery allowed by the Rules, particularly as to the number of depositions allowed,
 17 particularly given the extensive lists of self-interested parties alleged in Plaintiff's Complaint,
 18 each of which will require targeted discovery requests.

19 **TRIAL SCHEDULE**

20 **12. The Parties Request A Trial Date As Follows:**

21 The parties agree that they cannot competently select a trial date until disposition of
 22 ARIN's Motion To Dismiss/Stay.

23 **13. The Parties Expect That The Trial Will Last For The Following Number Of Days:**

24 The parties agree that they cannot accurately approximate the number of days necessary
 25 for trial until disposition of ARIN's Motion To Dismiss/Stay.

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1 Dated: October 16, 2006

IDELL & SEITEL, LLP
2 By: /s/ Terri R. Hanley
Terri R. Hanley
3 Counsel for Plaintiff GARY KREMEN

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6 IT IS SO ORDERED.

7 UNITED STATES DISTRICT COURT JUDGE

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